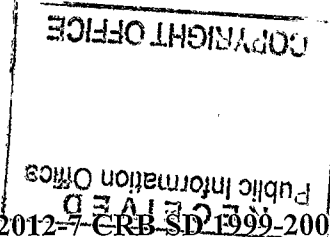


Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

In the Matter of)

Docket No. 2012-6 CRB CD 2004-2009
(Phase II)

)
Distribution of the 2004, 2005, 2006, 2007,)
2008 and 2009 Cable Royalty Funds)
_____)



In the Matter of)

Docket No. 2012-7 CRB SD 1999-2009
(Phase II)

)
Distribution of the 1999-2009 Satellite)
Royalty Funds)
_____)

**SETTLING DEVOTIONAL CLAIMANTS' MOTION TO COMPEL INDEPENDENT
PRODUCERS GROUP TO PRODUCE DOCUMENTS**

The Settling Devotional Claimants ("SDC") hereby move to compel Independent Producers Group ("IPG") to produce documents responsive to the SDC's follow-up requests served September 29, 2016. IPG's Responses of October 6, 2016, to the SDC's Follow-Up Document Requests (which repeat each request followed by the response) are attached to this Motion as Exhibit A.

All of the SDC's follow-up requests seek communications that are expected to explain why IPG's expert, Dr. Cowan, made multiple rounds of material changes to his calculations of the proposed satellite royalty shares for each year in both the Devotional and Program Suppliers categories. As discussed in the SDC's Reply in Support of Motion for Distribution and Motion to Strike IPG's Amended Direct Statement filed September 9, 2016, and in the SDC's Reply in Support of Motion to Strike filed September 29, 2016, Dr. Cowan's Amended Expert Report and the underlying calculations show a highly significant, but unexplained change from a level-linear to a log-linear regression model. Dr. Cowan has made unconvincing efforts to obfuscate the

UNDERSIZED DOCUMENTS

AB did...

☒ Docketed (all cases)

☒ Store on shared drive

☒ Distributed to all

☒ Emailed to JS on telework

☐ Filed

difference between the models. IPG has now admitted that he also failed to preserve the data files showing how he arrived at his amended results. Therefore, the SDC have a substantial need for the requested discovery so they and the Judges may fully understand the true reasons for Dr. Cowan's changes. The SDC have no way to obtain a substantial equivalent for these materials by other means, and IPG's failure to disclose the material will frustrate the truth-seeking function of discovery.

I. The Requested Communications Involving IPG, Counsel for IPG, and Experts Hired by IPG Fall Within the Exception to Overcome Work Product Protection.

The SDC requested all documents between (1) Dr. Cowan and Denise Vernon of IPG or anyone else at IPG (including Raul Galaz), (2) Dr. Cowan and counsel for IPG, (3) Ms. Vernon and Navigant Consulting, (4) Dr. Laura Robinson and Navigant, and (5) all communications with Mr. Jeff West or Dr. Robinson, concerning:

- Dr. Cowan's original, August 22, 2016 Expert Report ("Cowan Report"),
- Changes between the Cowan Report and his August 31, 2016 Amended Report ("Amended Report"), and
- The Amended Report and Dr. Cowan's September 25, 2016 Affidavit with additional changes to the satellite shares ("Cowan Affidavit")

Ex. A at Follow-Up Requests No. 4-9, 13-20. Additionally, in an effort to capture all potentially relevant communications, the SDC requested: (1) all communications with Navigant about formulas or data underlying the Cowan Report, Amended Report, or the Cowan Affidavit (Follow-Up Request No. 21), (2) all communications regarding the discovery of errors that led to the filing of IPG's Amended Direct Statement (Follow-Up Request No. 23), (3) all communications with Dr. Cowan concerning the SDC's August 26, 2016, Notice of Consent to 1999-2009 Satellite Shares Proposed by IPG, and Motion for Entry of Distribution Order (Follow-Up Request No. 24), and (4) all internal communications between Dr. Cowan and

anyone at Analytic Focus LLC or anyone working under Dr. Cowan's direction, concerning errors or corrections to the Cowan Report, Amended Report, or the Cowan Affidavit (Follow-Up Request No. 25). IPG objected to each of these requests on the grounds that the documents are "privileged" and "not a 'follow-up' to produced documents, and are therefore outside the scope of allowed discovery." *See* Ex. A. IPG is wrong.

The SDC's follow-up requests expressly relate to Dr. Cowan's proposed methodology for calculating satellite shares, as set forth in IPG's Amended Direct Statement. The Judges' regulations state that "all parties shall be given a reasonable opportunity to conduct discovery on amended statements." 37 C.F.R. § 351.6. Therefore, the follow-up requests concerning changes to Dr. Cowan's calculations are squarely within the scope of discovery.

That being said, the SDC acknowledge that communications involving a party and its experts and counsel are generally not discoverable because they are protected by the work product doctrine. But under the extraordinary, unique circumstances here, the documents requested by the SDC fall within the narrow exception to work product protection, because the SDC have shown a substantial need for the materials to prepare their case and cannot, without undue hardship, obtain their substantial equivalent by other means.

The SDC filed their notice consenting to IPG's satellite shares on August 26, 2016. On August 31, 2016, IPG filed its Amended Direct Statement including Dr. Cowan's Amended Report. It should be underscored that the Judges' rules do not contemplate such a filing within days of the filing of the direct statement. The rules allow for parties to submit Amended Direct Statements "based on new information received during the discovery process." 37 C.F.R. §351.4(c). Here, IPG submitted the "Amended Direct Statement" *before* discovery was produced.

Certainly, it is not uncommon for parties to make technical corrections to direct statements — and to be clear, the SDC is not suggesting that typographical errors should not be corrected. However, a comparison of IPG’s Direct and Amended Statements make clear that typos were not at the root of this IPG issue. Significantly, in its first Amended Direct Statement (immediately following the SDC’s Notice and Motion to Accept the IPG satellite calculations), IPG provided no explanation of what Dr. Cowan changed or why he changed it. Only after being confronted with the SDC and MPAA motions to strike did IPG argue it was simply correcting calculation errors in the satellite percentages, rather than modifying the methodology. *See* IPG’s September 15, 2016 Opposition to SDC Motion to Strike at 6-7.

Then, a little over a week later on September 25, 2016 (three days *after* the deadline for the SDC to file its response to IPG’s Opposition), IPG served on the SDC an unsworn “affidavit” from Dr. Cowan making a *third set of changes* to the satellite figures. Ex. B, September 25, 2016 Email from B. Boydston to SDC and MPAA counsel attaching Dr. Cowan’s Affidavit. This time, Dr. Cowan claimed that he erroneously included the wrong satellite figures in his Amended Report. Ex. B at 2.

When the SDC requested that IPG produce the data file that led to Dr. Cowan’s revised satellite results that were included in IPG’s Amended Direct Statement, counsel for IPG initially feigned ignorance. After several rounds of emails regarding the production requests, he belatedly advised that Dr. Cowan “overwrote” the files showing how he calculated the satellite figures in his Amended Report. Ex. C, September 26-27, 2016 Email Correspondence between B. Boydston and M. MacLean at 1.

Not only has IPG failed to identify what alleged errors Dr. Cowan made in his initial report, but also IPG falsely denies making any changes to its methodology. As discussed in the

SDC's motion to strike, Dr. Cowan's Amended Report and underlying calculations do not show mere "calculation errors" – they show a significant, unexplained methodological change from a level-linear to a log-linear regression model for calculating shares. Further, IPG has failed to preserve the data and calculations underlying the revised satellite results in the Amended Report, leaving the SDC with no way to determine how or why Dr. Cowan changed his results – not just once but twice. Because documents have not been preserved and because IPG has been – in the best case – less than candid about Dr. Cowan's methodological changes, the narrow exception to the work product doctrine applies.

Under Federal Rule of Civil Procedure 26(b)(3)(A), which codifies federal common law on the work product doctrine, a party may discover materials prepared in anticipation of litigation by another party or its representative, including the other party's attorney or consultant, if the requesting party "shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." Fed. R. Civ. P. 26(b)(3)(A). The D.C. Circuit has held that the exception to work product protection will apply if the moving party "demonstrates that the materials are relevant to the case, the materials have a unique value apart from those already in the movant's possession, and 'special circumstances' excuse the movant's failure to obtain the requested materials itself." *F.T.C. v. Boehringer Ingelheim Pharm., Inc.*, 778 F.3d 142, 155 (D.C. Cir. 2015); *see also United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 315 F.R.D. 103, 109 (D.D.C. 2016). The key inquiry for showing "substantial need" for the materials is "whether non-disclosure will impair the truth-seeking function of discovery." *Boehringer Ingelheim Pharm.*, 778 F.3d at 155.

The requested documents and communications involving IPG, its counsel, and its experts (and those working under their direction) meet this standard. Dr. Cowan made significant

changes to the satellite shares under the guise of simply “correcting errors,” but he has offered no explanation for why he made these changes. The SDC have no other way to obtain this information, because Dr. Cowan failed to preserve the calculations showing the changes that he made to his proposed satellite shares. Thus, the internal correspondence concerning those changes is highly relevant, uniquely valuable to shed light on the reasons behind the changes, and SDC have no other way to obtain this information. Furthermore, the SDC have substantial need for the materials, because IPG’s failure to disclose them will impair the SDC’s ability to discover the truth about why Dr. Cowan changed his proposed satellite shares and whether it had anything to do with the SDC’s consent to his initial proposal. Under *Boehringer Ingelheim Pharm*, IPG cannot hide behind work product protection in this circumstance.

II. The Requested Communications Involving Raul Galaz are Not Covered by Work Product Protection.

Even if an exception to the work product protection did not apply in this case, IPG has no basis for objecting to the SDC’s request for documents between Mr. Galaz and Dr. Cowan or Mr. Galaz and Navigant concerning the Cowan Report, changes between the Cowan Report and Amended Report, and the Amended Report as compared to the Cowan Affidavit. Ex. A at Responses to Follow-Up Requests No. 1-3, 10-12.

Mr. Galaz is notoriously not a lawyer (having resigned from the California bar in disgrace to avoid disbarment), so his communications with IPG cannot be covered by attorney-client privilege. Mr. Galaz’s communications also are not protected under the work product doctrine absent evidence that he is an employee or consultant of IPG. Mr. Galaz has testified in this proceeding that he is no longer employed by IPG. He said he now calls himself a consultant. Docket No. 2012-6 CRB CD 2004-2009 and 2012-7 CRB SD 1999-2009 (Phase II), Direct and

Rebuttal Hearing, Apr 14, 2015, Tr. Vol 2, 147:7-11 (“*I call myself consultant* because I’m no longer technically employed.”) (emphasis supplied).

When the SDC made a follow-up request for any employment or consulting agreements between Mr. Galaz and IPG to validate that assertion, IPG responded that no documents exist. Ex. A at Response to Follow-Up Request No. 26. If IPG cannot establish that Mr. Galaz is a consultant, then his communications would not fall within the zone of privilege for purposes of work product protection. *See Yeda Research & Dev. Co. v. Abbott GmbH & Co. KG*, 292 F.R.D. 97, 111 (D.D.C. 2013) (held documents submitted were sufficient to show the expert in question was a consultant for the attorneys in the case, and thus his “work product would be subject to the showing of need.”).

To the extent that IPG can document that Mr. Galaz is a consultant of IPG in this proceeding and his communications fall within the zone of privilege, these communications are nevertheless discoverable under the exception to the work product doctrine, because under *Boehringer Ingelheim Pharm.*, the materials are relevant, they have unique value apart from the files already disclosed to the SDC, the SDC cannot obtain the information through any other means, and if the communications are not disclosed, the SDC will be impaired from obtaining the truth about the changes in Dr. Cowan’s methodology. 778 F.3d at 155.

Accordingly, IPG should be compelled to produce all requested communications and documents involving Mr. Galaz and the Cowan Report, the Amended Report, and the Cowan Affidavit.

III. Conclusion

In conclusion, the SDC respectfully request that the Judges compel IPG to produce documents responsive to each of the SDC’s September 29, 2016 follow-up requests on the

grounds that they fall within the exception to the work product privilege or are not protected by the work product privilege.

Handwritten signature of Matthew J. MacLean in cursive, followed by the initials "MW".

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Counsel for Settling Devotional Claimants

October 17, 2016

CERTIFICATE OF SERVICE

I, Matthew J. MacLean, hereby certify that a copy of the foregoing was sent electronically and by overnight mail this 17th day of October, 2016, to the following:

INDEPENDENT PRODUCERS GROUP

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Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

PROGRAM SUPPLIERS

Gregory O. Olaniran
Lucy Holmes Plovnick
Mitchell Silberberg & Knupp LLP
1818 N Street, NW
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Washington, DC 20036

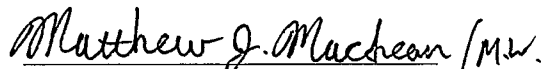

Matthew J. MacLean

Exhibit A

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2004, 2005, 2006, 2007,)	Docket No. 2012-6 CRB CD 2004-2009
2008 and 2009 Cable Royalty Funds)	(Phase II) (REMAND)
)	
In the Matter of)	
)	
Distribution of 1999-2009 Satellite)	Docket No. 2012-7 CRB SD 1999-2009
Royalty Funds)	(Phase II) (REMAND)
)	

**INDEPENDENT PRODUCERS GROUP RESPONSES TO
DOCUMENT REQUESTS OF SETTLING DEVOTIONAL CLAIMANTS**

On behalf of Independent Producers Group ("IPG"), the following are the responses to the discovery requests propounded by the Settling Devotional Claimants ("SDC"), dated September 2, 2016 and September 29, 2016.

General Objections

IPG will respond to the requests to the best of its ability; however, with respect to each of the requests, IPG states the following General Objections:

- 1) IPG objects to these requests to the extent that they are vague, ambiguous, or otherwise not susceptible to a response, and to the extent that they are overly broad, unduly burdensome, and seek the disclosure of documents and information not reasonably calculated to lead to the discovery of evidence admissible in this proceeding.
- 2) IPG objects to these requests to the extent they call for the disclosure of information that is confidential to IPG and/or third parties. Any information identified as "confidential" shall be subject to a General Protective Order proposed to the Copyright Royalty Judges for this proceeding.
- 3) IPG objects to these requests to the extent that they seek disclosure of documents and

information that is not subject to discovery pursuant to the regulations applicable to the Copyright Royalty Board, set forth at 37 C.F.R. Section 301.1, et seq.

- 4) IPG objects to these requests to the extent that the definitions and instructions purport to impose obligations beyond those imposed by the regulations of the Copyright Royalty Board.
- 5) IPG objects to these requests to the extent that they seek the disclosure of information and documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine and/or the common interest privilege.
- 6) IPG objects to these requests to the extent that they seek the disclosure of information and documents not within IPG's possession, custody, or control.
- 7) IPG objects to these requests to the extent that they seek the disclosure of information unrelated to these Phase II proceedings, or to the Phase II category in which the propounding party is involved.
- 8) IPG objects to these requests to the extent that they seek information in a form or format not regularly kept in the normal course of business.
- 9) IPG objects to these requests to the extent that they request the preparation of documents that do not exist.
- 10) IPG objects to these requests to the extent that they request the production of documents already included and produced as part of the Direct Case of IPG.
- 11) IPG objects to the instructions to the extent that they call for either responses or the production of documents in a format beyond what is required by the Copyright Royalty Board regulations, or in a format with which the responding party did not cooperate with IPG, e.g., repeating each of the requests.
- 12) IPG simultaneously served document requests on the propounding party herein. IPG objects to these requests to the extent that they seek documents similarly requested by IPG but to which the propounding party objects and will refuse to produce documents. Absent an order of the Copyright Royalty Board requiring reciprocal disclosure and production, IPG will not produce such documents.

RESPONSES TO DOCUMENT REQUESTS

1. All documents which underlie, relate to, support or form the basis for the statement in the Expert Report of Charles D. Cowan, Ph. D. ("Cowan Report") and the Amended Expert Report of Charles D. Cowan, Ph. D. ("Amended Cowan Report") that, "I have been retained by Pick & Boydston to develop a methodology for estimating values for programs/sets of program for different third party television show providers for use by the Copyright Royalty Board in its determination of allocation of royalties."

Response to Request No. 1: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 1.

2. All documents which underlie, relate to, support or form the basis for the statement of Dr. Cowan in the Cowan Report and the Amended Cowan Report that, "I was also asked to review past methodologies employed and data provided to determine their utility."

Response to Request No. 2: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 2, 3.

3. All documents, reports, analyses or other material which reflect, relate to, or form the basis for any conclusions reached by Dr. Cowan as to the utility or accuracy of past methodologies employed by IPG in proceedings before the Copyright Royalty Board.

Response to Request No. 3: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 2, 3.

4. All documents, data, and source material that Dr. Cowan considered that underlie, relate to, support or form the basis of, or in the alternative undermine or dispute all facts, conclusions, and/or opinions contained in the Cowan Report and the Amended Cowan Report.

Response to Request No. 4: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 2, 3.

5. All data provided to Dr. Cowan, as referenced in paragraph 2 of the Cowan Report and the Amended Cowan Report.

Response to Request No. 5: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 2, 3.

6. All documents showing the source of the data that Dr. Cowan was provided (Cowan Report and Amended Cowan Report, at ¶ 2), including who selected, compiled, and provided him with the data.

Response to Request No. 6: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 2, 3.

7. All documents underlying the statement: "I developed a methodology that is directly responsive to what is my understanding of the valuation required for these analyses, similar to methods I have used in the past." (Cowan Report and Amended Cowan Report, ¶ 3.)

Response to Request No. 7: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 3.

8. All documents, rulings, past submissions by "Plaintiffs and Defendants" and econometric literature on the topic of allocations of royalties which Dr. Cowan states he has read prior to preparation of the Cowan Report (Cowan Report and Amended Cowan Report, ¶ 6).

Response to Request No. 8: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 3.

9. All documents underlying Dr. Cowan's statement that the method he adopted is a "commonly used method." (Cowan Report and Amended Cowan Report, ¶ 10.)

Response to Request No. 9: Objection as overly broad. The statements are based on Dr. Cowan's expert knowledge and experience. No documents will be produced.

10. All documents underlying the "set of estimates that relies on a calculation that the Judges have accepted in past hearings," referenced in paragraph 10 of the Cowan Report and Amended Cowan Report.

Response to Request No. 10: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 3.

11. All documents underlying the statement "There is a mechanism that the CSO has to be following to determine the value of the station. The mechanism is unknown, which is why we need to estimate what the values are for programs in the bundle." (Cowan Report and Amended Cowan Report, ¶ 13.)

Response to Request No.11: Except as set forth in the General Objections stated above, IPG does not object to this request. The statements are based on Dr. Cowan's expert knowledge and experience. No documents will be produced.

12. All documents underlying the statement, "[W]hile there is likely some variation in value to CSO to CSO about the value of different titles, the value cannot vary in an extreme manner, since that would create an extreme demand for some stations that are offering the popular titles, and thus the title would be omnipresent." (Cowan Report and Amended

Cowan Report, ¶ 14.)

Response to Request No. 12: Except as set forth in the General Objections stated above, IPG does not object to this request. The statements are based on Dr. Cowan's expert knowledge and experience. No documents will be produced.

13. All documents underlying the statements, "The CSO is indifferent to viewership of a particular program ...," and "[V]iewership cannot be important to the decisions of the CSO" (Cowan Report and Amended Cowan Report, ¶ 16.)

Response to Request No. 13: Except as set forth in the General Objections stated above, IPG does not object to this request. The statements are based on Dr. Cowan's expert knowledge and experience. No documents will be produced.

14. All documents underlying the statement, "If viewership of a particular program were important to the CSO, the CSO would put terms in the licensing agreement to allow it to have a say in whether the time or the offering of a station were to be changed." (Cowan Report and Amended Cowan Report, ¶ 16.)

Response to Request No. 14: Except as set forth in the General Objections stated above, IPG does not object to this request. The statements are based on Dr. Cowan's expert knowledge and experience. No documents will be produced.

15. All computations and all documents that underlie the results set forth in each table contained in the Cowan Report, including but not limited to "the voluminous data provided to me" (Cowan Report ¶ 30) and the modified alternative estimates Dr. Cowan was asked to consider.

Response to Request No. 15: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 3, 4.

16. All computations and all documents that underlie the results set forth in each table contained in the Amended Cowan Report, including but not limited to "the voluminous data provided to me" (Amended Cowan Report ¶ 30) and the modified alternative estimates Dr. Cowan was asked to consider.

Response to Request No. 16: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 3, 4.

17. All documents related to any computation of confidence intervals conducted in connection with any witness's methodology in this case.

Response to Request No. 17: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 4.

18. All reference materials Dr. Cowan relied upon, including the pages cited on page 21 of the Cowan Report and the Amended Cowan Report.

Response to Request No. 18: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 3, 4.

19. All documents relating to any changes between the Cowan Report and the Amended Cowan Report, and the reasons for those changes, including all communications with Dr. Cowan and notes of communications with Dr. Cowan in which any changes or reasons for changes were discussed.

Response to Request No. 19: Except as set forth in the General Objections stated above, IPG does not object to this request. See Item 4.

FOLLOW-UP DOCUMENT REQUESTS

1. All communications between Dr. Cowan and Mr. Galaz concerning Dr. Cowan's initial Expert Report that was submitted with IPG's August 22, 2016 Direct Statement ("Cowan Report").

Response to Follow-Up Request No. 1: Objection. The requested documents are privileged. Additionally, the requested documents are not a "follow-up" to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

2. All communications between Dr. Cowan and Mr. Galaz concerning any changes, edits, or corrections made between the Cowan Report and Dr. Cowan's Amended Expert Report that was submitted with IPG's August 31, 2016 Amended Direct Statement ("Amended Cowan Report").

Response to Follow-Up Request No. 2: Objection. The requested documents are privileged. Additionally, the requested documents are not a "follow-up" to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

3. All communications between Dr. Cowan and Mr. Galaz concerning the Amended Cowan Report and the unsworn Affidavit of Dr. Cowan dated September 23, 2016 that was served on the SDC by email on September 25, 2016 ("Cowan Affidavit").

Response to Follow-Up Request No. 3: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

4. All communications between Dr. Cowan and Ms. Vernon or anyone else on behalf of IPG, concerning the Cowan Report.

Response to Follow-Up Request No. 4: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

5. All communications between Dr. Cowan and Ms. Vernon or anyone else on behalf of IPG, concerning any changes, edits, or corrections made between the Cowan Report and the Amended Cowan Report.

Response to Follow-Up Request No. 5: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

6. All communications between Dr. Cowan and Ms. Vernon or anyone else on behalf of IPG, concerning the Amended Cowan Report and the Cowan Affidavit.

Response to Follow-Up Request No. 6: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

7. All communications between Dr. Cowan and counsel for IPG concerning the Cowan Report.

Response to Follow-Up Request No. 7: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will

be produced.

8. All communications between Dr. Cowan and counsel for IPG concerning any changes, edits, or corrections made between the Cowan Report and the Amended Cowan Report.

Response to Follow-Up Request No. 8: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

9. All communications between Dr. Cowan and counsel for IPG concerning the Amended Cowan Report and the Cowan Affidavit.

Response to Follow-Up Request No. 9: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

10. All communications between Mr. Galaz and Navigant concerning the Cowan Report.

Response to Follow-Up Request No. 10: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

11. All communications between Mr. Galaz and Navigant concerning any changes, edits, or corrections made between the Cowan Report and the Amended Cowan Report.

Response to Follow-Up Request No. 11: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

12. All communications between Mr. Galaz and Navigant concerning the Amended Cowan Report and the Cowan Affidavit.

Response to Follow-Up Request No. 12: Objection. The requested documents are

privileged. Additionally, the requested documents are not a "follow-up" to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

13. All communications between Ms. Vernon and Navigant concerning the Cowan Report.

Response to Follow-Up Request No. 13: Objection. The requested documents are privileged. Additionally, the requested documents are not a "follow-up" to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

14. All communications between Ms. Vernon and Navigant concerning any changes, edits, or corrections made between the Cowan Report and the Amended Cowan Report.

Response to Follow-Up Request No. 14: Objection. The requested documents are privileged. Additionally, the requested documents are not a "follow-up" to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

15. All communications between Ms. Vernon and Navigant concerning the Amended Cowan Report and the Cowan Affidavit.

Response to Follow-Up Request No. 15: Objection. The requested documents are privileged. Additionally, the requested documents are not a "follow-up" to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

16. All communications between Dr. Robinson and Navigant concerning the Cowan Report.

Response to Follow-Up Request No. 16: Objection. The requested documents are privileged. Additionally, the requested documents are not a "follow-up" to produced documents, and are therefore outside the scope of allowed discovery. Additionally, the document requests suggest that Dr. Robinson is not regarded as the same as Navigant, even though Dr. Robinson is a principal of Navigant. No documents will be produced.

17. All communications between Dr. Robinson and Navigant concerning any changes, edits, or corrections made between the Cowan Report and the Amended Cowan Report.

Response to Follow-Up Request No. 17: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. Additionally, the document requests suggest that Dr. Robinson is not regarded as the same as Navigant, even though Dr. Robinson is a principal of Navigant. No documents will be produced.

18. All communications between Dr. Robinson and Navigant concerning the Amended Cowan Report and the Cowan Affidavit.

Response to Follow-Up Request No. 18: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. Additionally, the document requests suggest that Dr. Robinson is not regarded as the same as Navigant, even though Dr. Robinson is a principal of Navigant. No documents will be produced.

19. All communications to, from or cc'ing Mr. West concerning the Cowan Report, the Amended Cowan Report, or the Cowan Affidavit.

Response to Follow-Up Request No. 19: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

20. All communications to, from or cc'ing Dr. Robinson concerning the Cowan Report, the Amended Cowan Report, or the Cowan Affidavit.

Response to Follow-Up Request No. 20: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

21. All communications with Navigant regarding any formulas or data relating to the the Cowan Report, the Amended Cowan Report, or the unsworn Affidavit of Dr. Cowan

dated September 23, 2016 that was served on the SDC by email on September 25, 2016.

Response to Follow-Up Request No. 21: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

22. All computations and calculations performed by Dr. Cowan in connection with the Cowan Report, the Amended Cowan Report, or the Cowan Affidavit.

Response to Follow-Up Request No. 22: Except as set forth in the General Objections stated above, IPG does not object to this request. Notwithstanding, all responsive documents have already been produced.

23. All communications regarding the discovery of the errors that led to the filing of IPG’s Amended Direct Statement.

Response to Follow-Up Request No. 23: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

24. All communications with Dr. Cowan regarding the SDC’s August 26, 2016, “Notice of Consent to 1999-2009 Satellite Shares Proposed by IPG, and Motion for Entry of Distribution Order.”

Response to Follow-Up Request No. 24: Objection. The requested documents are privileged. Additionally, the requested documents are not a “follow-up” to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

25. All internal communications between Dr. Cowan and anyone at Analytic Focus LLC, or anyone working under the direction of Dr. Cowan, concerning errors or corrections to the Cowan Report, the Amended Cowan Report, or the Cowan Affidavit.

Response to Follow-Up Request No. 25: Objection. The requested documents are

privileged. Additionally, the requested documents are not a "follow-up" to produced documents, and are therefore outside the scope of allowed discovery. No documents will be produced.

26. Any employment or consulting agreement between Mr. Galaz and IPG.

Response to Follow-Up Request No. 26: Except as set forth in the General Objections stated above, IPG does not object to this request. No documents exist, and no documents will therefore be produced.

IPG DOCUMENT CATEGORIES TO BE PRODUCED

1. Engagement agreement with Analytic Focus LLC.
2. Electronic files relating to distribution methodology previously generated and produced in these proceedings.
3. Electronic files and documents provided to Dr. Charles Cowan.
4. Electronic files generated by Analytic Focus, LLC.

Respectfully submitted,

Dated: October 6, 2016

_____/s/_____
Brian D. Boydston, Esq.
California State Bar No. 155614

PICK & BOYDSTON, LLP
10786 Le Conte Ave.
Los Angeles, California 90024
Telephone: (213) 624-1996
Facsimile: (213) 624-9073
Email: brianb@ix.netcom.com

Attorneys for Independent Producers Group

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2016, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.

_____/s/_____
Brian D. Boydston

MPAA REPRESENTED PROGRAM SUPPLIERS

Gregory O. Olaniran, Esq.
Lucy Holmes Plovnick Esq.
Mitchell, Silberberg & Knupp LLP
1818 N Street, N.W., 8th Floor
Washington, D.C. 20036

SETTLING DEVOTIONAL CLAIMANTS:

Clifford M. Harrington
Matthew MacLean
Pillsbury, Winthrop, et al.
P.O. Box 57197
Washington, D.C. 20036-9997

Exhibit B

Draper, Victoria L.

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Sunday, September 25, 2016 12:07 PM
To: goo@msk.com; lhp@msk.com; Harrington, Clifford M.; MacLean, Matthew J.; Draper, Victoria L.
Cc: worldwidesg@aol.com
Subject: 1999-2009 Royalty Distributions
Attachments: Affidavit_of_Charles Cowan 09-23-16.docx

Counsel,

We have been informed by Analytic Focus that the aggregate of the files that were utilized by Dr. Charles Cowan in the creation of his report of August 22, 2016, can be accessed through the attached link:

<https://analyticfocusllc.sharefile.com/d-sb8651cf99404069a>

As you will see, it is highly redundant of files that were already produced.

Additionally, it appears as though statements made by Mr. MacLean earlier this week were accurate, and that two of the tables appearing in Dr. Cowan's August 30, 2016 report incorrectly reported the results of his calculations. To that matter, attached please find an affidavit executed by Dr. Cowan.

Brian Boydston

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2004, 2005, 2006, 2007,)	Docket No. 2012-6 CRB CD 2004-2009
2008 and 2009 Cable Royalty Funds)	(Phase II) (REMAND)
)	
 In the Matter of)	
)	
Distribution of 1999-2009 Satellite)	Docket No. 2012-7 CRB SD 1999-2009
Royalty Funds)	(Phase II) (REMAND)
)	

AFFIDAVIT OF DR. CHARLES COWAN

1. On August 30, 2016, I submitted an amended version of a report I had prepared in connection with the above proceedings. Thereafter, I was asked to provide the backup materials on which I relied in order to create the amended report, and such materials were produced in discovery. In subsequent communications received from opposing counsel following the production of back up materials, a discrepancy between the backup materials and the reported results were noted and questioned.

2. At that time, both I and members of my company reviewed the materials in order to determine if a discrepancy existed and, if so, the explanation for the discrepancy. Almost immediately, it was determined that I erroneously included two tables in the body of the report that were incorrect. These tables, tables 2 and 4 to my amended report, both pertain to the Satellite estimates. After substantial investigation, it was determined that these two tables were taken from an earlier analysis of an incomplete data file, and needed to be replaced. In fact, the backup materials I provided in discovery reflect the correct satellite figures.

3. Both corrected tables are provided below. While the changes from the reported tables to the corrected tables are nominal, it is still my responsibility to ensure that the proper data is provided in this case. The error is my fault - I apologize to all parties concerned.


Table 2: Relative Split in Number of Subscribers - Satellite Devotional - Between IPG Programs and SDC Programs Holding Constant Year and Station (Call Sign)

Year	IPG	SDC
1999	1.11%	98.89%
2000	0.00%	100.00%
2001	8.78%	91.22%
2002	11.23%	88.77%
2003	10.39%	89.61%
2004	10.73%	89.27%
2005	20.16%	79.84%
2006	36.60%	63.40%
2007	27.52%	72.48%
2008	0.00%	100.00%
2009	26.25%	73.75%

Table 4: Relative Split in Number of Subscribers - Satellite Suppliers - Between IPG Program Supplier Programs and MPAA Programs Holding Constant Year and Station

Year	IPG PS	MPAA
2000	11.14%	88.86%
2001	9.79%	90.21%
2002	8.81%	91.19%
2003	7.08%	92.92%
2004	5.77%	94.23%
2005	7.09%	92.91%
2006	10.64%	89.36%
2007	12.47%	87.53%
2008	8.08%	91.92%
2009	6.69%	93.31%

DATED: September 23, 2016

By: _____

Dr. Charles Cowan

Exhibit C

Draper, Victoria L.

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Tuesday, September 27, 2016 7:47 PM
To: MacLean, Matthew J.
Cc: goo@msk.com; lhp@msk.com; Harrington, Clifford M.; Draper, Victoria L.
Subject: Re: 1999-2009 Royalty Distributions

There is nothing suspicious going on here, just mistakes.

Brian

-----Original Message-----

From: "MacLean, Matthew J."
Sent: Sep 27, 2016 4:42 PM
To: "Brian D. Boydston, Esq."
Cc: "goo@msk.com", "lhp@msk.com", "Harrington, Clifford M.", "Draper, Victoria L."
Subject: Re: 1999-2009 Royalty Distributions

Brian,

I am glad you finally understand my request.

The SDC will oppose your filing of yet another revision to Dr. Cowan's results, principally because I am far from persuaded that the very material changes were actually the result of an error. Your failure to preserve the data and calculations underlying the amended direct statement, along with the fact that it took you this long to admit that they were not preserved, only adds to suspicions.

Matt

Sent from my iPhone

On Sep 27, 2016, at 6:48 PM, Brian D. Boydston, Esq. <brianb@ix.netcom.com> wrote:

Matt,

The backup that is current for the second amended report is what we sent right after the August 30th report. We don't have a file that tells how Mr. Cowan got to the satellite calculations that were in the Aug. 30th report – they were based on an intermediate result that Mr. Cowan overwrote.

That didn't exist by the time we supplied the backup materials, and Mr. Cowan didn't even know he had copied anything off of them.

We have produced everything Mr. Cowan relied on for the August 22nd report and everything he relied on for the August 30th report. We do not have any materials encompassing the steps between the two reports, since they weren't anything Mr. Cowan was ever going to rely on.

Accordingly, we have no further materials to provide to you.

Also, you referenced Mr. Cowan's "unsworn" affidavit. That was an oversight. We will file one which is "sworn".

Brian

-----Original Message-----

From: "MacLean, Matthew J."

Sent: Sep 27, 2016 2:29 PM

To: "Brian D. Boydston, Esq."

Cc: "goo@msk.com", "lh@msk.com", "Harrington, Clifford M.", "Draper, Victoria L."

Subject: Re: 1999-2009 Royalty Distributions

Brian,

I want the backup calculations for the satellite results in Dr. Cowan's amended direct statement, not just the backup calculations for the result in this unsworn "affidavit" that is supposedly a correction to the amended direct statement. I want to know what he changed, and why. The brouhaha over his first methodological change clearly shows that I cannot take him at his word when he says he is merely making a correction.

This is my fourth and final time requesting this information. And frankly, I do not believe you that you do not understand my request, just like I do not believe that Dr. Cowan and IPG don't know the difference between a natural scale and a logarithmic scale. I hate to be so blunt about it, but this time you have gone too far feigning ignorance.

Matt

Sent from my iPhone

On Sep 27, 2016, at 5:12 PM, Brian D. Boydston, Esq. <brianb@ix.netcom.com> wrote:

Matt, the affidavit is something we will file with a corrected written statement.

As for documents underlying Mr. Cowan's calculations, I don't understand what you are looking for as we produced it prior to producing the backup for the second version.

Brian

-----Original Message-----

From: "MacLean, Matthew J."

Sent: Sep 26, 2016 12:54 PM

To: "Brian D. Boydston, Esq." , "goo@msk.com" ,
"lh@msk.com" , "Harrington, Clifford M." , "Draper, Victoria L."
Subject: RE: 1999-2009 Royalty Distributions

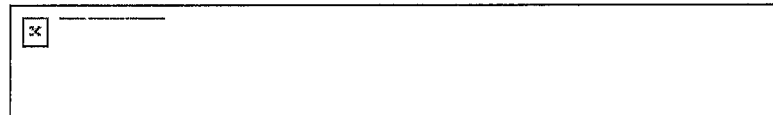
Brian,

Is the "affidavit" attached to your email below something that you intend to file with the Judges as part of yet another iteration of a written direct statement, or is it just something you are providing to us in discovery?

Regardless of your answer to this question, it does not excuse IPG from producing the documents underlying the results reported in the amended direct statement. Please produce the documents underlying the "earlier analysis of an incomplete data file" that purportedly led to the results in the amended direct statement.

Why do I have to keep asking for this? Are you really going to force us to go to the Judges over something you know you are required to produce?

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t 202.663.8183 | f 202.663.8007
matthew.maclea@pillsburylaw.com | [website bio](#)



From: Brian D. Boydston, Esq. [<mailto:brianb@ix.netcom.com>]
Sent: Sunday, September 25, 2016 12:07 PM
To: goo@msk.com; lh@msk.com; Harrington, Clifford M.;
MacLean, Matthew J.; Draper, Victoria L.
Cc: worldwidesg@aol.com
Subject: 1999-2009 Royalty Distributions

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Brian Boydston

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